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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,340	01/03/2004	Daniel Lovy	1370.249US1	7580

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EXAMINER
RUTKOWSKI, JEFFREY M

ART UNIT	PAPER NUMBER
2416	

NOTIFICATION DATE	DELIVERY MODE
09/18/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspto@slwip.com
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	Application No.	Applicant(s)
Advisory Action **_Before the Filing of an Appeal Brief_**	10/751,340	LOVY ET AL.
	Examiner	Art Unit
	JEFFREY M. RUTKOWSKI	2416

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

THE REPLY FILED 17 August 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _1-72_.

   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/KWANG B. YAO/
Supervisory Patent Examiner, Art Unit 2416

Continuation of 11. does NOT place the application in condition for allowance because: The arguments with respect to Horbal not disclosing dissimilar communication devices communicating through a common interface that operates in said communication devices are not persuasive because the arguments are based on piecemeal analysis. Horbal's micro-server can be embedded into consumer products (col. 4 lines 34-36). Eythchison discloses consumer products that communicate with each other via proxy (see figure 2). The combination of Eytchison and Horbal discloses consumer products that communicate with each other via micro-servers embedded in each device.
The arguments with respect to Horbal teaching away from Eytchison because Eytchison's architecture is protocol independent and Horbal's architecture is protocol dependent are persuasive. The Examiner agrees with Applicant in the regard that modifying Eytchison with Horbal would require the micro-server to be embedded on each device in Eytchison. The problem with this combination is that there is not even a common protocol stack used by the network devices. Therefore, the obviousness rejections based only on Eytchison and Horbal are withdrawn because modifying Eytchison with Horbal would require major modifications to Eytchison.
The Examiner does not agree that the combination of Norrell, Eytchison and Horbal is improper. In Norrell's architecture each device already uses TCP/IP protocols as a dependent protocol for communications among the devices (see col. 8 lines 7-15). As indicated by the Applicant, Eytchison is concerned with communications in existing infrastructures. Therefore, modifying Norrell with Eytchison does not change Norrell's dependency on TCP/IP protocols because Eytchison does not change the manner in which the network devices operate. Eytchison does change the network architecture by introducing a proxy as a common interface. Therefore, the combination of Norrell and Eytchison disclose an architecture where a proxy is used as a common interface to allow the different devices to communicate. The problem with this architecture is that it increases the total cost of ownership because there is an extra node in the network to maintain. Horbal simplifies the architecture of the combination of Norrell and Eytchison by moving the proxy functionality to each device in the form of the micro-server, which negates the need to maintain extra network nodes. Unlike the previous combination (modifying Eytchison with Horbal), all the devices in Norrell's invention already depend on the TCP/IP protocol so there is not any need to retrofit every device with a protocol dependent stack before implementing the micro-server.